

# INDEX

Opinions below .....	2
Jurisdiction .....	2
Questions presented .....	2
Statute and regulations involved .....	3
Statement .....	4
Specification of Errors to be urged .....	5
Reasons for granting the writ .....	6
Conclusion .....	14
Appendix .....	15

## CITATIONS

### Cases:

Badger v. Hoidale, 88 F. (2nd) 208 .....	10
Booth's Drug Store, Inc. 19 F. Supp. 95 .....	13
C. B. Havens & Company v. Colonial Apt. House Company, 97 Nebr. 639, 150 N. W. 1011 .....	9
Chicago T. & T. Co. v. 4136 Wilcox Bldg. Corp., 302 U. S. 120, 58 S. Ct. 125, 82 L. Ed. 147 .....	9, 12, 13
Erie Railroad Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 .....	9
Geddes v. Anaconda Min. Co., 254 U. S. 590, 41 S. Ct. 209, 65 L. Ed. 425 .....	8
Hawkins v. Glenn, 131 U. S. 319, 9 S. Ct. 739, 33 L. Ed. 184 .....	13
Hawks v. Hammil, 288 U. S. 52, 53 S. Ct. 240, 77 L. Ed. 610 .....	9
Heenan & Finlan v. Parmele, et al, 80 Nebr. 514, 118 N. W. 324 .....	7
Helvering v. Cement Investors, Inc. Adv. Ops. Sup. Ct. of U. S., 86 L. Ed. 1142 .....	11
Helvering v. South Penn. Oil Co., 68 F. (2d) 420 .....	12
Howard Hotel Corporation v. Comm. Int. Rev. 39 B. T. A. 1147 .....	11
Kleeden v. Comm. Int. Rev., 38 B. T. A. 821 .....	11
McPherson v. Comm. Int. Rev. 54 F. (2d) 751 .....	12
Northwest Util. Sec. Corp. v. Helvering, 67 F. (2d) 619 .....	11
Oklahoma Nat. Gas. Co. v. Oklahoma, 273 U. S. 257, 47 S. Ct., 391, 71 L. Ed. 634 .....	12
Schmitt & Bro. Co. v. Mahoney, 60 Nebr. 20, 82 N. W. 99 .....	6, 7
Taylor Oil & Gas Co. v. Comm. Int. Rev. 47 F. (2d) 109 .....	11
Universal Battery Co. v. United States, 281 U. S. 480, 40 S. Ct. 422, 74 L. Ed. 1051 .....	11
Weekes Grain & Live Stock Co. v. Ware & Leland, 99 Nebr. 126, 155 N. W. 223 .....	9

### Statutes:

#### Federal:

Sec. 112 (b) (4), Revenue Act of 1434, 48 Stat. 704 .....	4, 15
Sec. 112 (g) (1) (C), Revenue Act of 1934, 48 Stat. 705 .....	3, 4, 15
Sec. 112 (g) (2), Revenue Act of 1934, 48 Stat. 705 .....	4, 15
Sec. 113 (a) (7) Revenue Act of 1934, 48 Stat. 707 .....	3, 15, 16

#### Nebraska:

Sec. 24-107, Comp. Stat. Nebr. 1929 .....	7, 8, 16
---	----------

Sec. 24-108, Comp. Stat. Nebr. 1929 .....	6, 16
Sec. 24-110, Comp. Stat. Nebr. 1929 .....	7, 17
Sec. 24-112, Comp. Stat. Nebr. 1929 .....	6, 18
Sec. 24-220, Comp. Stat. Nebr. 1929 .....	7, 18

**Treasury Department Regulations:**

Art. 22 (a)-20, U. S. Treasury Reg. 86, Rev. Act of 1934.....	5, 10
Same regulation under prior acts back to 1918.....	11

**Miscellaneous:**

13 Am. Jur. Sec. 796, p. 815.....	8
13 Am. Jur. 1357.....	12
West Virginia Law Quarterly, Vol. 44, p. 219.....	13

**In the  
Supreme Court of the United States**

**OCTOBER TERM, 1942**

\_\_\_\_\_  
**No.**.....  
\_\_\_\_\_

**THE CUSHMAN MOTOR WORKS, PETITIONER  
VS.**

**COMMISSIONER OF INTERNAL REVENUE,  
RESPONDENT**

\_\_\_\_\_  
**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT**

\_\_\_\_\_  
To the Honorable the Chief Justice and Associate Jus-  
tices of the Supreme Court of the United States:

Your Petitioner, The Cushman Motor Works, prays  
that a writ of certiorari issue to review the judgment  
of the United States Circuit Court of Appeals for the  
Eighth Circuit, entered in the above-entitled case on Oc-  
tober 19, 1942, affirming a deficiency in corporation in-

come and excess-profits tax found by the Board of Tax Appeals against Petitioner in the sums of \$11,278.34 and \$1,191.87 for the petitioner's fiscal years ended July 31, 1935 and 1936, respectively.

### **OPINIONS BELOW**

The findings and opinion of the United States Board of Tax Appeals (R. 23-42) (now United States Tax Court) is reported in 44 B. T. A. 1288. The opinion of the Circuit Court of Appeals (R. 230-237) was filed October 19, 1942, but is not yet reported.

### **JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on Oct. 19, 1942 (R. 238); petition for rehearing timely filed and denied Nov. 6, 1942 (R. 255); order staying mandate 30 days entered November 14, 1942, (R. 255). The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

### **QUESTIONS PRESENTED**

#### **I**

Whether the general statutory powers granted a dissolved Nebraska corporation to close up its business and settle its affairs include authority to be a corporate party to an income tax-free "reorganization," or, as the Circuit Court of Appeals holds, whether such authority must be specifically granted.

Whether the Circuit Court failed to follow applicable local decisions relative to powers of Nebraska corporations in process of dissolution.

## II.

Whether federal income tax laws and regulations extend corporate life of dissolved corporations during and for purposes of liquidation and winding-up.

## III.

Whether the rule of strict construction applied to the powers of dissolved corporations is federal precedent that state statutes of early origin, intended to operate prospectively in broad and remedial derogation of the common law, must be restricted to their exact terms, and held incapable of encompassing subsequently arising conditions within their purview.

## STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Revenue Act of 1934, c. 277, 48 Stat. 680, are set forth in the Appendix, *infra*.

Briefly stated, the applicable revenue act provides that the basis of property for determining gain or loss shall be its cost, except that if acquired by a corporation in connection with a "reorganization," then the basis shall be the same as it would be in the hands of the transferor (Sec. 113 (a) (7)). "Reorganization" includes a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred (Sec. 112 (g) (1) (C)).

Petitioner's transferor, Cushman Motor Works, was dissolved by its stockholders prior to transfer of assets to petitioner. It was held that it did not have sufficient corporate life after dissolution to be a corporate party to a reorganization.

The applicable Nebraska laws on dissolution of corporations are set forth in the Appendix hereto.

The applicable Treasury Regulation is quoted under II, *infra*.

### STATEMENT

Both the Board (R. 24) and the Circuit Court of Appeals found that petitioner in 1934 "acquired certain personal property assets formerly owned by Cushman Motor Works (herein called Motor Works) a dissolved Nebraska corporation", (R. 231). That they were acquired in exchange for stock of petitioner is conceded. The Board stated (R. 39) that "Motor Works was a Nebraska corporation and we find nothing in the Nebraska statutes extending the life of a corporation beyond the date of its dissolution." Because of this conclusion, (which was abandoned by respondent), the Board's theory was that it was unnecessary to consider (R. 41) whether there was an intercorporate reorganization under Section 112, Revenue Act of 1934. Section 112 (b) (4), (g) (1) (C) and (2), defining "reorganization" and "a party to a reorganization," contemplate and require intercorporate transactions. Concededly, if Motor Works was dead for all purposes, it could not transfer or exchange its assets for stock of petitioner, nor in any way be a party to a reorganization.

In its opinion the court notes (R. 232), "the Commissioner ignores the theory upon which the Board decided the case," and that the Commissioner sought affirmance on other grounds, commenting that if either was correct, an affirmance should follow. The new theory was that proof of required control in transferor or its stockholders after the transfer was lacking. The court did not sustain the

Commissioner's new theory. Its entire decision is based, as was that of the Board, on the theory of corporate incapacity of a dissolved corporation. It held that "no statutory exceptions in Nebraska giving to a dissolved corporation authority to be a 'party' to a 'reorganization' \* \* \* have been called to our attention and we find none" (R. 234).

Regardless of whether the theory is that no prolongation statutes existed, or that they were too narrow to embrace the act done, the result is the same, viz., no inter-corporate transaction requisite to reorganization could take place.

### **SPECIFICATION OF ERRORS TO BE URGED**

The Circuit Court of Appeals erred:

#### **I**

1. In holding that a specific statutory authorization must exist before a dissolved Nebraska corporation could be a "party" to "reorganization" under the income tax law.

2. In failing to hold that the general powers granted a dissolved Nebraska corporation to close up its business and settle its affairs include authority to be a party to such reorganization.

3. In failing to follow applicable Nebraska decisions relative to powers of Nebraska corporations in process of dissolution.

#### **II**

4. In failing to consider and apply Art. 22 (a) 20, U. S. Treasury Regulations 86, promulgated under the Revenue Act of 1934, and pertinent federal decisions relative to income-tax treatment of dissolved corporations.

### III.

5. Because it established a federal precedent that state statutes of early inception, intended to operate protectively in broad and remedial derogation of the common law, can embrace only new conditions anticipated by specific enactment.

## REASONS FOR GRANTING THE WRIT

### I.

In holding there are no Nebraska statutory exceptions giving dissolved corporations authority to be a "party" to income tax-free reorganizations, (R. 234), the decision of the Circuit Court is in conflict with an applicable decision of the Supreme Court of Nebraska in *Schmitt & Bros. Co. v. Mahoney*, 60 Neb. 20, 21, 24, 25, 82 N. W. 99. The Circuit Court mistakes the effect of that opinion. The Circuit Court construes it to merely hold that a suit brought by a dissolved corporation cannot be abated under the Nebraska Code of Civil Procedure.<sup>1</sup> Contrary-wise, the holding is that the case could have been abated under the Code,<sup>2</sup> but was maintainable by reason of Sects. 63 and 67, of Chapter 16,<sup>3</sup> entitled "Corporations." "That legislation," the state court said, "confers ample authority upon every dissolved corporation to prosecute suits in its corporate name as though the corporation had never been dissolved." Next, state court said: "The purpose and objects of the sections were to save every corporate right and power to defunct corporations \* \* \*."

<sup>1</sup> (R. 233.)

<sup>2</sup> pp 23, 24, *Schmitt & Bro. Co. v. Mahoney*, supra.

<sup>3</sup> Comp. Stat., Nebr., 1897. These sections were 24-108, 112, Comp. Stat., Nebr., 1929, during the applicable period.



The phrase "purpose and objects of the sections" obviously refer to *all* the dissolution sections of Chapter 16 and not restrictively to Sects. 63 and 67,<sup>4</sup> because the next following sentence refers specifically to Sects. 63 and 67 as "being special provisions in regard to a particular subject" and "control all general powers." One of the dissolution sections obviously referred to<sup>5</sup> authorizes dissolved corporations to "continue to act for the purpose of closing their business." Another,<sup>6</sup> gives last directors as trustees "full power to settle the affairs," and, "divide among stockholders the money and property that shall remain." Still another section<sup>7</sup> authorizes the trustees to sell and dispose of real estate "in such manner and upon such terms as may be thought best for the interest of the creditor and stockholders \* \* \*."

The purposes and objects of the foregoing were to "save every corporate right and power to defunct corporations," according to opinion of the state court. One corporate right is to be a party to an income tax reorganization. The lower court holds that right does not exist. The opinions conflict.

The decision is likewise in conflict with the applicable local decision in *Heenan & Finlan v. Parmele, et al*, 80 Nebr. 514, 520, 118 N. W. 324. There a last acting director of a dissolved Nebraska corporation was held to be "the

---

<sup>4</sup> p 25, *Schmitt & Bro. Co. v. Mahoney*, *supra*.

<sup>5</sup> Sect. 143, Comp. Stat. Nebr., 1897. This was 24-220, Comp. Stat. Nebr., 1929, during the applicable period.

<sup>6</sup> Sect. 62, Comp. Stat. Nebr., 1897. This was 24-107, Comp. Stat. Nebr., 1929, during the applicable period.

<sup>7</sup> Sect. 65, Comp. Stat. Nebr., 1897. This was 24-110, Comp. Stat. Nebr., 1929 during the applicable period.

sole trustee and the only person legally authorized to bind the corporation" to a contract of sale. In the case at bar, the last director-trustees contracted to exchange the entire assets, both real and personal, for stock. Not having held the dissolved corporation dead for all purposes, the Circuit Court must have contemplated the trustees had some powers for winding-up. They could only be (a) to distribute the assets in kind; (b) to sell them for cash and divide the cash; (c) to exchange them for other property in liquid form for distribution. Had the trustees done either (a) or (b), the court would have held the act within their power and function. The effect of the court's decision is that they could sell or exchange assets for cash, but could not sell or exchange assets for other assets, liquid in form and approved by stockholders for distribution to them pro-rata.<sup>8</sup> Here the trustees were also the only persons "legally authorized to bind the corporation." By Sec. 24-107 they were the statutory trustees of the stockholders, with "full power to settle the affairs" and divide "money and property." To hold in effect that they could sell and convey for cash, but could not carry out a stockholder-sanctioned exchange is a restrictive interpretation not justified by Nebraska or any

---

<sup>8</sup> Power of corporation to sell assets for stock has been recognized even in cases where the minority stockholders objected, if the stock was readily marketable. *Geddes v. Anaconda Min. Co.*, 254 U. S. 590, 65 L. Ed. 425.

<sup>9</sup> 13 Am. Jur. Sec. 796, p. 815—"It is also generally held that a corporation for the purpose of winding up its affairs has power with the consent of a majority of its stockholders to sell its stock in good faith to another corporation and take in payment the stock of the purchasing corporation, with a view to distributing such stock among its stockholders."

controlling precedent.<sup>9</sup> Restrictive interpretation is justified only in case of punitive forfeiture statutes.<sup>10</sup>

In construing state corporation laws, an elemental is that state sovereignty is absolute over corporate life of its creation.<sup>11</sup> The local statutes and decisions thus present an appropriate situation for the application of *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, 78, 58 S. Ct. 817, 82 L. ed. 1188. It states " . . . the law to be applied in any case is the law of the state. And whether . . . declared . . . in a statute or by its highest court . . . is not a matter of federal concern." *Hawks v. Hammil*, 288 U. S. 52, 58, 59, 53 S. Ct. 240, 77 L. ed. 610, also announces this guiding rule: "If the single decision . . . is clear . . . submission to its holding has developed . . . into a practice . . . . Indeed the radiating potencies of a decision may go beyond the actual holding. . . . An opinion may be so framed that there is doubt whether the part of it invoked as an authority is to be ranked as a definitive holding or merely a considered dictum. . . . At least it is a considered dictum, and not comment merely obiter. It has capacity, though it be less

<sup>10</sup> See *C. B. Havens & Co. v. Colonial Apt House Co.*, 97 Nebr. 639, 150 N. W. 1011; *Weekes Grain & Live Stock Co. v. Ware & Leland*, 99 Nebr. 126, 127, 155 N. W. 223, where, under a forfeiture statute the court said: "This is a harsh, technical rule resulting from a forfeiture made imperative by legislation as judicially construed. The statute makes a distinction between a corporation forfeiting its charter for nonpayment of a fee and other corporations abandoning or losing charter for other reasons."

<sup>11</sup> *Chicago T. & T. Co. v. 4136 Wilcox Bldg. Corp.*, 302 U. S. 120, 127, 128.

than a decision, to tilt the balanced mind toward submission and agreement."

The Circuit Court refused to apply the above rule in the case at bar, but recognized its application in *Badger v. Hoidale*, 88 F. (2nd) 208 (C. C. A. 8th).<sup>12</sup>

## II.

Wholly outside of corporate powers after dissolution under state statutes, federal income tax regulations and decisions recognize continued corporate life for income tax purposes, a matter seemingly overlooked by the court. Art. 22 (a)-20, U. S. Treasury Regulations 86 provides:

"When a corporation is dissolved, its affairs are usually wound up by a receiver or trustee in dissolution. The corporate existence is continued for the purpose of liquidating the assets and paying the debts, and such receiver or trustees stand in the stead of the corporation for such purposes (See sections 274 and 298)."

---

<sup>12</sup> The Circuit Court said: "This was probably dictum. But the interpretation and construction of the Constitution of a state is peculiarly within the province of the highest court of the state, and its construction will be followed by the national courts. *Blue Valley Creamery Co. v. Consolidated Products Co.* (C. C. A. 8) 81 F. (2nd) 102. Considered dictum of that court should not be ignored when a federal court is attempting to construe or ascertain the meaning of the local law, whether it be the state statute or the State Constitution. *Blue Valley Creamery Co. v. Consolidated Products Co.*, supra; Rules applicable to the construction of a statute are equally applicable to the construction of a constitution."

It would be hard to conceive a more expeditious method of liquidating the assets than their transfer in exchange for stock. This regulation is of long standing.<sup>13</sup> It should be applied unless clearly wrong.<sup>14</sup> It is a reasonable regulation and should be given effect.<sup>15</sup> That the corporation acted through trustees or agents is immaterial; it was nevertheless the "party" to the "reorganization."<sup>16</sup>

<sup>13</sup> Same regulations appears: Art. 547, Reg. 45, Rev. Act of 1918; Art. 548, Reg. 62, Rev. Act of 1921; Art. 548, Reg. 65, Rev. Act of 1924; Art. 548, Reg. 69, Rev. Act of 1926; Art. 71, Reg. 74, Rev. Act of 1928; Art. 71, Reg. 77, Rev. Act of 1932; Art. 22 (a) 21, Reg. 94, Rev. Act of 1936; Art. 19. 22 (a)-21, Reg. 103, Int. Rev. Code.

<sup>14</sup> *Northwest Util. Sec. Corp. v. Helvering*, 67 F. (2d) 619.

<sup>15</sup> *Universal Battery Co. v. U. S.*, 281 U. S. 480, 40 S. Ct. 422, 74 L. Ed. 1051; *Taylor Oil and Gas Co. v. Comm.*, 47 F. (2d) 109.

<sup>16</sup> *Helvering v. Cement Investors, Inc.*, Adv. Ops., 86 L. Ed. 1142, June 1, 1942—"Thus it is fair to say that the property transferred was property in which the creditors had an equitable interest and that the transfer was made with their authority and on their behalf \* \* \* And we see no reason to conclude that a beneficial owner of, or equitable claimant to, property is precluded from consummating an exchange which qualifies under section 112 (b) (5) merely because the actual conveyance is made by his trustee or title holder;" *Kleeden v. Commissioner*, 38 B. T. A. 821; *Howard Hotel Corporation v. Commissioner*, 39 B. T. A. 1147, in which the president of transferror purchased at foreclosure sale as a dry trustee, in which there are many similarities to this case.

Income taxwise, the Board of Tax Appeals and the federal courts have applied the quoted regulation as extending broad powers incident to winding-up.<sup>17</sup>

### III.

The decision of the lower court that statutory exceptions must be more specific than the Nebraska statutes (and consequently those of every other state with like provisions), to enable a dissolved corporation to be a party to an income tax reorganization, (R. 234), decides an important question of Federal law which has not been and should be settled by the Supreme Court.

Dissolution ends corporate life unless there is statutory authority for prolongation.<sup>18</sup> However in nearly all states there now exist statutes allowing complete and orderly winding up of a dissolved corporation's affairs.<sup>19</sup> Under such legislation the dissolved corporation is "still in being."<sup>20</sup> And under a like statute is said to retain a qualified existence with capacity to commit an act of

---

<sup>17</sup> *McPherson v. Comm. Int. Rev.*, 54 F. (2nd) 751, 753 (C. C. A. 9th). (Cal). Referring to a local statute similar to Nebraska's the court said: "The power given the trustees of a dissolved corporation to adjust and settle its affairs under the California statute are broad. \* \* \* Such powers, in so far as the payment of debts and adjustment of disputed matters affecting the assets are concerned, are fully as comprehensive as the directors of a corporation would ordinarily exercise during the active life of the corporation." See *Helvering v. South Penn Oil Co.*, 68 F. (2nd) 420, (C. A. A. D. C.).

<sup>18</sup> *Chicago T. & T. Co. v. 4136 Wilcox Bldg. Corp.*, 302 U. S. 120, 125, 58 S. Ct. 25, 81 L. Ed. 147.

<sup>19</sup> 13 Am. Jur. 1357.

<sup>20</sup> *Oklahoma Natural Gas Co. v. Oklahoma*, 273 U. S. 257, 260, 47 S. Ct. 391, 71 L. Ed. 634.

bankruptcy.<sup>21</sup> Within the restrictions of the prolonging statute, "all corporate powers essential to these ends remain unimpaired."<sup>22</sup> "By the express terms of the statute such a corporation continues to possess the power to deal with the property in its possession, for the purpose of winding up the corporate business. Hence, any act \* \* \* consistent with the winding up of the business is an act within the delimited powers \* \* \*."<sup>23</sup> And if "while acting within the scope of its delimited powers, it commits an act of bankruptcy, it would appear to be as amenable to bankruptcy proceedings as any other corporation acting within its full corporate powers."<sup>24</sup>

In federal courts, the question of the status of a dissolved corporation has arisen frequently in connection with bankruptcy jurisdiction.<sup>25</sup> In *Chicago T. & T. Co. v. 4136 Wilcox Bldg. Corp.*, supra, this court did not deny bankruptcy relief on the ground a dissolved corporation was without power to invoke the Act, but because the period of prolonged life had elapsed.

<sup>21</sup> *In Re Booth's Drug Store*, 19 F. Supp., 95.

<sup>22</sup> *Hawkins v. Glenn*, 131 U. S. 319, 9 S. Ct. 739, 743, 33 L. Ed. 184.

<sup>23</sup> 44 West Virginia Law Quarterly 219, 222.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.* Citing *In re Storck Lumber Co.*, 114 Fed. 360 (D. C. Md. 1902); *White Mountain Paper Co. v. Morse & Co.*, 127 Fed. 643 (C. C. A. 1st, 1904); *In re Munger Vehicle Tire Co.*, 159 Fed. 901 (C. C. A. 2nd, 1908); *In re Adams & Hoyt Co.*, 164 Fed. 489 (D. C. Ga. 1908); *In re Double Star Brick Co.*, 210 Fed. 980 (D. C. Cal. 1913); *Hammond v. Lyon Realty Co.*, 59 F. (2nd) 592 (C. C. A. 4th, 1932); *In re 211 East Delaware Place Bldg. Corp.*, 7 F. Supp. 892 (D. C. Ill. 1934).

Nebraska dissolution statutes came into being with statehood,<sup>26</sup> antedating the National Bankruptcy Act of 1898. Comparable Acts of many states are of earlier origin. If, as the lower court reasons, dissolved corporations are denied benefits of corporate reorganization under income tax laws, because earlier state statutes lack specific authorization, the same lack denies them benefits of other modern remedial legislation, possibly including the National Bankruptcy Act. Thus the decision injects confusion into an important question touching federal laws and ought to be settled by this court.

### CONCLUSION

It is respectfully submitted that a writ of certiorari should be granted.

THOMAS S. ALLEN,  
*Attorney for Petitioner.*

December 7, 1942.

HAROLD J. REQUARTTE,  
JAMES L. BROWN,  
*Of Counsel for Petitioner.*

---

<sup>26</sup> See Estabrook's R. S., Nebraska, 1866.







## APPENDIX

Sec. 112 (a), (b) (4), Revenue Act of 1934, 48 Stat. 704:

"(a) General Rule. Upon the \* \* \* exchange of property the entire amount of the gain or loss \* \* \* shall be recognized, except as hereinafter provided in this section.

"(b) Exchanges solely in kind \* \* \*

"(4) Same-Gain of corporation. No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization."

Sec. 112 (g) (1) (C) and (2), Revenue Act of 1934, 48 Stat. 705:

"(g) Definition of Reorganization. As used in this section and section 113:

"(1) The term 'reorganization' means \* \* \* (C) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred,"

"(2) The term 'a party to a reorganization' includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another."

Sec. 113 (a) (7), Revenue Act of 1934, 48 Stat. 707:

"(a) Basis (Unadjusted) of Property.—The basis of property shall be the cost of such property; except that—

\* \* \*

“(7) Transfers to corporation where control of property remains in same persons.—If the property was acquired after Dec. 31, 1917, by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of 50 per centum or more remained in the same persons or any of them, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. \* \* \*”

Sec. 24-107, Compiled Statutes of Nebraska 1929:

“Same, Dissolved, Affairs How Settled. Upon the dissolution, by the expiration of the term of its charter, or otherwise, of any corporation now existing, or hereafter created, and unless other persons be appointed by the legislature, or by some court of competent authority, the directors of managers of the affairs of such corporations, acting last before the time of its dissolution, by whatever name they may be known in law, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, collect and pay the outstanding debts, and divide among the stockholders the moneys and property that shall remain, in proportion to the stock of each stockholder paid up, after the payment of debts and necessary expenses; and the persons so constituted trustees shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands; and no suit against any such corporation shall abate in consequence of such dis-

solution, and said trustees may be made parties by scire facias; and all liens of judgments and decrees of any courts of equity, existing at the time of such dissolution either in favor of or against such corporation, shall continue in force in the same manner as if such dissolution had not taken place: *Provided*, in case of the death, resignation, inability or refusal to act, of the directors or managers aforesaid, or the survivors thereof, the district court of the proper county may, on the application of any persons interested, appoint trustees to fill the vacancy, with full power to perform the duties aforesaid. (R. S. 1913, 555; C. S. 1922, 447.)”

Sec. 24-108, Compiled Statutes of Nebraska 1929:

“Same, Suits Not to Abate by Expiration of Charter. No suit or action, either at law or in equity, pending in any court, in favor or against any banking or other corporation, shall be discontinued or abate by the dissolution of such corporation, whether such dissolution occur by the expiration of its charter or otherwise; but all such suits or actions may in all courts of justice, be prosecuted by the creditors, assigns, receivers or trustees having the legal charge of the assets of such dissolved corporation, to final judgment or decree, in the corporate name of such dissolved corporation.”

Sec. 24-110, Compiled Statutes of Nebraska 1929:

“Same, When Dissolved, Title to Real Estate Passes to Trustee. The title of all real estate belonging to any such corporation shall, at the time of the dissolution of the same, pass to the trustees of such corporation, who shall have full power and authority to sell and dispose of any such real estate, in such manner and upon such terms as may be thought best for the interest of the creditors and stockholders, and upon any such sale to make a good and sufficient title therefor.”